

## Federal Housing Finance Agency

## § 9001.109

### **§ 9001.106 Restrictions resulting from employment of family and household members.**

(a) *Disqualification of employee.* An employee may not participate in any particular matter in which a regulated entity is a party if the regulated entity employs as an employee or a consultant his or her spouse, child, parent, or sibling, or member of his or her household unless the DAEO has authorized the employee to participate in the matter using the standard set forth in 5 CFR 2635.502(d).

(b) *Reporting certain relationships.* Within 30 calendar days of the spouse, child, parent, sibling, or member of the employee's household being employed by the regulated entity, the employee shall provide in writing notice of such employment to the DAEO.

### **§ 9001.107 Other limitations.**

(a) *Director and Deputy Directors.* The Director, the Deputy Director of the Division of Enterprise Regulation, the Deputy Director of the Division of Federal Home Loan Bank Regulation, and the Deputy Director for Housing Mission and Goals are subject to additional financial interest limitations as set forth in section 1312(g) of the Safety and Soundness Act, 12 U.S.C. 4512(g).

(b) *Financial interests in Bank members and other financial institutions.* If an employee or the spouse or minor children of the employee directly or indirectly owns a financial interest in a member of a Bank or in a financial institution such as a mortgage bank, mortgage broker, bank, thrift, or other financial institution that originates, insures, or

services mortgages that are owned, guaranteed, securitized, or collateralized by a regulated entity, the employee is cautioned not to violate the statutory prohibition against financial conflicts of interest set forth in 18 U.S.C. 208. The government-wide *de minimis* and other exceptions set forth in 5 CFR 2640.202 are applicable to the ownership or control of interests in such financial institutions. Employees are encouraged to seek a determination from the DAEO as to whether the financial interest in the member of the Bank or in the financial institution creates a financial conflict of interest or an appearance of a conflict of interest and whether the employee should disqualify himself or herself from participating in an official capacity in a particular matter involving the financial institution.

### **§ 9001.108 Prohibited recommendations.**

Employees shall not make any recommendation or suggestion, directly or indirectly, concerning the acquisition, sale, or divestiture of securities of a regulated entity.

### **§ 9001.109 Prohibited purchase of assets.**

An employee or the employee's spouse or minor children shall not purchase, directly or indirectly, any real or personal property from a regulated entity, unless it is sold at public auction or by other means which would assure that the selling price is the asset's fair market value.



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## PART 9301—DISCLOSURE OF RECORDS AND INFORMATION

### Subpart A—Freedom of Information Act

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### Subpart A—Freedom of Information Act

AUTHORITY: 5 U.S.C. 552; Pub. L. No. 110-175, 121 Stat. 2524 (2007); 5 U.S.C. 301 and 552; Exec. Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Exec. Order No. 13392, 70 FR 75373-75377, 3 CFR, 2006 Comp., pp. 216-200.

SOURCE: 77 FR 34180, June 11, 2012, unless otherwise noted.

#### PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

##### § 9301.1 In general.

This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. This subpart should be read in conjunction with the FOIA. The Freedom of Information Act applies to third-party requests for documents concerning the general activi-

ties of the government and of SIGAR in particular. When a U.S. citizen or an individual lawfully admitted for permanent residence requests access to his or her own records, it is considered a Privacy Act request. Such records are maintained by SIGAR under the individual's name or personal identifier. Although requests are considered either FOIA requests for Privacy Act requests, agencies process requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's privacy.

[77 FR 38171, June 27, 2012]

##### § 9301.2 Authority and functions.

Section 1229 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, established the Special Inspector General for Afghanistan Reconstruction (SIGAR). SIGAR's mission under Sections 1229 and 842 of Public Law 110-181, is to provide independent oversight of the treatment, handling, and expenditure of funds appropriated or otherwise made available for the reconstruction of Afghanistan; detect and deter fraud, waste, and abuse of U.S. funds; and promote actions to increase program economy, efficiency, and effectiveness.

##### § 9301.3 Organization.

SIGAR maintains its headquarters in Arlington, Virginia, and field offices in Kabul and elsewhere in Afghanistan.

#### PROCEDURES

##### § 9301.4 Availability of records.

SIGAR provides records to individual requesters in response to FOIA requests. Records that are required by the FOIA to be made available for public inspection and copying are accessible on SIGAR's Web site, <http://www.sigar.mil>. SIGAR will also identify records of interest to the public that are appropriate for public disclosure, and then post these records.

[77 FR 38171, June 27, 2012]

## § 9301.5

### § 9301.5 Accessing records without request.

Certain SIGAR records, including the agency's Quarterly Report, audit reports, testimony, oversight plans, press releases and other public issuances, are available electronically from SIGAR's homepage at <http://www.sigar.mil>. SIGAR encourages requesters to visit its Web site before making a request for records under § 9301.6.

### § 9301.6 Requesting records.

(a) *Written requests required.* For records not available as described under § 9301.5, requesters wishing to obtain information from SIGAR should submit a written request to SIGAR's FOIA Officer. Requests should be addressed to FOIA Officer, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601-3804 or by email to [sigar.pentagon.gen-coun.mbx.foia@mail.mil](mailto:sigar.pentagon.gen-coun.mbx.foia@mail.mil).

(b) *Contents of requests.* Requests should be as specific as possible and should reasonably specify the records sought so that the records can be located with a reasonable amount of effort. The request should identify the desired record or describe it, and include information such as the date, title or name, author, recipient, and subject matter of the record, where possible. The request should also include a statement of the requester's willingness to pay fees, or request a fee waiver. The words "FOIA REQUEST" or "REQUEST FOR RECORDS" should be clearly marked on the cover letter, letter, and/or envelope.

(c) *Response to requests—(1) Processing.* SIGAR will provide an individualized tracking number, and estimated date of completion, and a brief description of the subjects of the request in an acknowledgement letter to the requester. The FOIA Officer shall determine within 20 days (except Saturdays, Sundays, and federal holidays) after receiving a request for records, whether it is appropriate to grant or deny the request. The 20-day period may be tolled once if the FOIA Officer requests information from the requestor or if additional

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time is necessary to clarify issues with the requestor regarding a fee assessment.

(i) *Request granted.* If the FOIA Officer decides to grant the request, either in-full or in-part, the FOIA Officer shall promptly provide the requester written notice of the decision. The FOIA Officer shall include with the notice both the requested records and a copy of the decision. The notice shall also describe the procedure for filing an appeal.

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the information was withheld. SIGAR will indicate, if technically feasible, the amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion was made. SIGAR will also indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemptions. The notice shall also describe the procedure for filing an appeal.

(iii) *Consultations and referrals:* When SIGAR receives a request for a record in its possession, it will determine whether another agency of the Federal Government, is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If SIGAR determines that it is best able to process the record in response to the request, then it will do so. If SIGAR determines that it is not best able to process the record, then it will either:

(A) Respond to the request regarding that record, after consulting with the agency best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(B) Refer the responsibility for responding to the request regarding that record to the agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be

presumed to be best able to determine whether to disclose it.

(2)(i) *Expedited processing.* At the time a requester submits an initial request for records the requester may ask the FOIA Officer in writing to expedite processing of the request. The request for expedited processing must be accompanied by a written statement, which shall state that it is true and correct to the best of the requester's knowledge and belief, explaining why expedited processing is warranted. The FOIA Officer shall generally grant requests for expedited processing of requests for records, and appeals of denials under paragraph (d)(2) of this section, whenever the FOIA Officer determines that:

(A) Failure to obtain the requested records on an expedited basis could reasonably pose a threat to a person's life or physical safety; or

(B) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about Government activity that is the specific subject of the FOIA request.

(ii) The FOIA Officer shall ordinarily decide within ten calendar days after receiving a request for expedited processing whether to grant it and shall notify the requester of the decision. If the FOIA Officer grants a request for expedited processing, the FOIA Officer shall process the request as soon as practicable. If the FOIA Officer denies a request for expedited processing, SIGAR shall act expeditiously on any appeal of that denial.

(3) *Extension for unusual circumstances*—(i) *In general.* If the FOIA Officer determines that unusual circumstances exist, the FOIA Officer may extend for no more than ten days (except Saturdays, Sundays and Federal holidays) the time limits described in paragraph (c)(1) of this section by providing written notice of the extension to the requester. The FOIA Officer shall include with the notice a brief statement of the reason for the extension and the date the FOIA Officer expects to make the determination.

(ii) *Additional procedures.* The FOIA Officer shall provide written notice to the requester if the FOIA Officer decides that the determination cannot be

made within the time limit described in paragraph (c)(3)(i) of this section. The notice shall afford the requester an opportunity to limit the scope of the request to the extent necessary for the FOIA Officer to process it within that time limit or an opportunity to arrange a longer period for processing the request.

(d) *Appeals*—(1) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's written decision may request SIGAR's FOIA Appellate Authority to review the decision. Appeals must be delivered in writing within 60 days of the date of the decision and should be addressed to the FOIA Appellate Authority, Office of Privacy, Records & Disclosure, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to Fax appeals to (703) 601-3804 or email to [sigar.pentagon.gencoun.mbx.foia@mail.mil](mailto:sigar.pentagon.gencoun.mbx.foia@mail.mil). An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Appellate Authority should grant the appeal.

(2) *Appeal decisions.* The Appellate Authority shall decide the appeal within 20 days (except Saturdays, Sundays and federal holidays) from the date it receives the appeal. If the Appellate Authority denies the appeal in full or part, the Appellate Authority shall promptly notify the requester in writing of the Appellate Authority's decision and the provisions for judicial review. If the Appellate Authority grants the appeal, the FOIA Officer shall notify the requester in writing and shall make available to the requester copies of the releasable records once the requester pays any fees that SIGAR assesses under §§ 9301.8 through 9301.10.

(3) *Mediation.* A response to an appeal will advise the requester that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD

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20740; Email: [ogis@nara.gov](mailto:ogis@nara.gov); Telephone: 202-741-5770; Facsimile: 202-741-5769; Toll-free: 1-877-684-6448.

[77 FR 34180, June 11, 2012, as amended at 77 FR 38171, June 27, 2012]

### COSTS

#### § 9301.7 Definitions.

For purposes of this subpart:

(a) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(b) *Direct costs* means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

(c) *Duplicate* means to copy records to respond to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(d) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly research.

(e) *Fee category* means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication.

(f) *Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied.

(g) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(h) *Representative of the news media* means any person or entity that gath-

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ers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(i) *Review* means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

(j) *Search for* means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

[77 FR 38172, June 27, 2012]

#### § 9301.8 Fees in general.

SIGAR shall charge reasonable fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. SIGAR will provide an estimated amount of fees, including a breakdown of the fees for search, review, and/or duplication. SIGAR may assess charges for time spent searching for records even if SIGAR is unable to locate the records or if the records are located and determined to be exempt from disclosure. In general, SIGAR shall apply the following fee schedule, subject to §§ 9301.9 through 9301.11:

(a) *Manual searches.* Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee).

(b) *Electronic searches.* Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews.* Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the initial review of records located in response to commercial use requests.

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of \$.10 per page. For other types of copies such as disks or audio visual tapes,



SIGAR shall charge the direct cost of producing the document(s). If duplication charges are expected to exceed \$25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated.

(e) *Advance payments required.* (1) The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(i) The FOIA Officer estimates that the fee will exceed \$250; or

(ii) [Reserved]

(2) The requester has previously failed to pay a fee in a timely fashion.

(i) [Reserved]

(ii) When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 9301.6(c)(1) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee.* SIGAR shall not charge a fee to any requester if:

(1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) SIGAR fails to comply with any time limit under the FOIA for responding to a request for records where no unusual or exceptional circumstances apply.

[77 FR 34180, June 11, 2012, as amended at 77 FR 38172, June 27, 2012]

#### § 9301.9 Fees for categories of requesters.

SIGAR shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, SIGAR shall assess fees that recover the full direct costs of searching for, reviewing and duplicating records.

(b) *Educational institutions.* SIGAR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* SIGAR shall provide records to re-

questers in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* SIGAR shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

#### § 9301.10 Other charges.

SIGAR may apply other charges, including the following:

(a) *Special charges.* SIGAR shall recover the full cost of providing special services, such as sending records by an overnight delivery service, to the extent that SIGAR elects to provide them.

(b) *Interest charges.* SIGAR may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests within a 30-day period for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

[77 FR 34180, June 11, 2012, as amended at 77 FR 38172, June 27, 2012]

#### § 9301.11 Payment and waiver.

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requestor of the applicable fees, the Officer shall inform the requestor of where to send the payment.

(b) *Waiver.* SIGAR may waive all or part of any fee provided for in §§ 9301.8 through 9301.9 when the FOIA Officer deems that as a matter of administrative discretion or disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the

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commercial interest of the requester. Requesters may request a waiver in their initial FOIA request letter. Requests for a fee waiver should explain how the information requested contributes to the public's understanding of the operations or activities of the government. In determining whether a fee should be waived, the FOIA Officer may consider whether:

(1) The subject matter specifically concerns identifiable operations or activities of the government;

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

[77 FR 34180, June 11, 2012, as amended at 77 FR 38172, June 27, 2012]

### Subpart B—Privacy Act

AUTHORITY: Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896, codified at 5 U.S.C. 552a(f) (agency rules).

#### § 9301.12 Purpose and scope.

The purpose of this subpart is to provide certain safeguards for an individual against the invasion of his or her personal privacy by SIGAR. This subpart is promulgated pursuant to the requirements applicable to all federal agencies contained in 5 U.S.C. 552a(f).

#### § 9301.13 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by SIGAR contains a record pertaining to them should address their inquiries to the Privacy Officer, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601-

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3804 or by email to *sigar.pentagon.gen-coun.mbx.privacy@mail.mil*. The written inquiry should contain a specific reference to the system of records maintained by the SIGAR listed in the SIGAR Notice of Systems of Records, or it should describe the type of record in sufficient detail reasonably to identify the system of records. Notice of SIGAR systems of records subject to the Privacy Act will be published in the FEDERAL REGISTER, posted on the SIGAR public facing Web site, and copies of the notices will be available upon request to the Privacy Officer when so published. A compilation of such notices will also be made and published by the Office of the Federal Register, in accordance with 5 U.S.C. 552a(f).

(b) At a minimum, the request should contain sufficient identifying information to allow SIGAR to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances when the requester's identification is insufficient to ensure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, SIGAR reserves the right to solicit from the person requesting access to a record additional identifying information.

(c) Ordinarily the person requesting will be informed whether the named system of records contains a record pertaining to such person within 10 days of such a request (excluding Saturdays, Sundays and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within the 10 days, the Privacy Officer will inform the person making the request the reasons for the delay and the date on which a response may be anticipated.

#### § 9301.14 Requests for access.

(a) *Requirement for written requests.* An individual desiring to gain access to a record pertaining to him or her in a system of records maintained by SIGAR must submit his or her request in writing in accordance with the procedures set forth in paragraph (b) of

this section. Individuals employed by the SIGAR may make their requests on a regularly scheduled workday (Monday through Friday, excluding legal Federal holidays) between the hours of 9:00 a.m. and 5:30 p.m. Such requests for access by individuals employed by SIGAR need not be made in writing.

(b) *Procedures*—(1) *Content of the request.* The request for access to a record in a system of records shall be addressed to the Privacy Officer at the address cited above, and shall name the system of records or contain a concise description of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the person requesting access which is maintained by SIGAR in a system of records, the request will be considered under both the Privacy Act of 1974 and the Freedom of Information Act, depending on which would allow greater access to the records requested. The request should contain necessary information to verify the identity of the person requesting access (see paragraph (b)(2)(vi) of this section). In addition, such person should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.) as well as any other identifying information contained in and required by the SIGAR Notice of Systems of Records.

(i) If the request for access follows a prior request under § 9301.1, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence or a copy of the SIGAR response to that request is attached. If the individual specifically desires a copy of the record, the request should so specify under § 9301.4.

(ii) [Reserved]

(2) *SIGAR action on request.* A request for access will ordinarily be answered within 10 days, except when the Privacy Officer determines otherwise, in which case the person making the request will be informed of the reasons for the delay and an estimated date by which the request will be answered. When the request can be answered

within 10 days, it shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the systems of records maintained by SIGAR;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the person requesting access is unable to meet the specified date and time, alternative arrangements may be made with the Privacy Officer;

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the Privacy Officer has determined that it would not unduly impede the right of access of the person making the request.

(iv) The amount of fees charged, if any (see §§ 9301.6 and 9301.7). (Fees are applicable only to requests for copies);

(v) The name, title, and telephone number of the SIGAR official having operational control over the record; and

(vi) The documentation required by SIGAR to verify the identity of the person making the request. At a minimum, SIGAR verification standards include the following:

(A) *Current or former SIGAR Employees.* Current or former SIGAR employees requesting access to a record pertaining to them in a system of records maintained by SIGAR may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have his or her identity verified by visual observation. If the current or former SIGAR employee cannot be so identified by the official having operational control over the records, identification documentation will be required. The employee's common access card, annuitant identification, driver licenses, or the "employee copy" of any official personnel document in the record are examples of acceptable identification validation.

(B) *Other than current or former SIGAR employees.* Individuals other than current or former SIGAR employees requesting access to a record pertaining

to them in a system of records maintained by SIGAR must produce identification documentation of the type described in paragraph (b)(2)(vi)(A) of this section, prior to being granted access. The extent of the identification documentation required will depend on the type of record for which access is requested. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements will be specified in the system of records notices published by SIGAR pursuant to 5 U.S.C. 552a(e)(4).

(C) *Access granted by mail.* For records to be made accessible by mail, the Privacy Officer shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to a person making a request of information under the FOIA, 5 U.S.C. 552. When, in the opinion of the Privacy Officer the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(D) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to \$5,000. In addition, depending upon the sensitivity of the records to which access is sought, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate; e.g., statements of other individuals who can attest to the identity of the person making the request.

(E) *Access by the parent of a minor, or by a legal guardian.* A parent of a minor, upon presenting suitable per-

sonal identification, may act on behalf of the minor to gain access to any record pertaining to the minor maintained by SIGAR in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of the documents authorizing the legal guardian to so act, and upon suitable personal identification of the guardian.

(F) *Granting access when accompanied by another individual.* When an individual requesting access to his or her record in a system of records maintained by SIGAR wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(G) *Granting access to individuals other than the subject of the record.* SIGAR will not disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, pursuant to the Privacy Act of 1974.

(H) *Denial of access for inadequate identification documentation.* If the official having operation control over the records in a system of records maintained by SIGAR determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the Privacy Officer prior to finally denying the individual access.

(vii) *Medical records.* The records in a system of records which are medical records shall be disclosed to the individual to whom they pertain in such manner and following such procedures as the Privacy Officer shall direct. When SIGAR in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to

whom it pertains, SIGAR may transmit such information to a physician named by the individual.

(viii) *Exceptions.* Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of litigation.

**§ 9301.15 Access to the accounting of disclosures from records.**

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records (including verification of identity) outlined in § 9301.14.

**§ 9301.16 Requests for copies of records.**

Rules governing requests for copies of records are the same as those for the granting of access to the records (including verification of identity) outlined in § 9301.14. (See also § 9301.19 for rules regarding fees.)

**§ 9301.17 Requests to amend records.**

(a) *Requirement for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by SIGAR must submit their request in writing in accordance with the procedures set forth herein unless this requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions. However, individuals who believe that such records are inaccurate may bring this to the attention of SIGAR.

(b) *Procedures.* (1)(i) The request to amend a record in a system of records shall be addressed to the Privacy Officer. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record in accordance with the provisions concerning access to records as set forth in this paragraph, copies of previous correspondence between the individual and SIGAR will serve in lieu of a separate description of the record.

(ii) When the individual's identity has been previously verified pursuant to § 9301.14(b)(2)(vi), further verification of identity is not required as long as the communication does not suggest that a need for verification has reappeared. If the individual's identity has not been previously verified, SIGAR may require identification validation as described in § 9301.14(b)(2)(vi). Individuals desiring assistance in the preparation of a request to amend a record should contact the Privacy Officer at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the desired proposed alternative language should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be set forth with such particularity as to permit SIGAR to understand the basis for the request and to make an appropriate amendment to the record.

(iv) The request should also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by SIGAR of personal information merely to permit verification of records, the burden of persuading SIGAR to amend a record will be upon the individual. The individual must furnish sufficient facts or credible documentation to persuade the official in charge of the system of the inaccuracy, irrelevancy, untimeliness, or incompleteness of the record.

(2) *SIGAR action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days, excluding Saturdays, Sundays and legal Federal holidays. In the event a decision cannot be made within this time frame, the individual making the request will be informed within 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(i) The decision of SIGAR whether to grant in whole, or deny any part of the request to amend the record.

(ii) The reasons for the determination for any portion of the request which is denied.

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(iii) The name and address of the official with whom an appeal of the denial may be lodged.

(iv) The name and address of the official designated to assist, as necessary, and upon request of, the individual making the request in the preparation of the appeal.

(v) A description of the review of the appeal within SIGAR (see § 9301.18).

(vi) A description of any other procedures which may be required of the individual in order to process the appeal.

### § 9301.18 Request for review.

(a) Individuals wishing to request a review of the decision by SIGAR with regard to an initial request to amend a record in accordance with the provisions of § 9301.17, should submit the request for review in writing and, to the extent possible, include the information specified in § 9301.17(a). Individuals desiring assistance in the preparation of their request for review should contact the Privacy Officer at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from SIGAR in which the request to amend was denied, and also should state the reasons why the individual believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons, as required by § 9301.17, set forth by SIGAR in its decision denying the amendment. In order to avoid the unnecessary retention of personal information, SIGAR reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by SIGAR within 180 days of the mailing by SIGAR of its decision upon an initial request. A request for review received after the 180 day period may, at the discretion of the Privacy Officer, be treated as an initial request to amend a record.

(c) The request for review should be addressed to the Appellate Authority, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As

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there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 601-3804 or by email to *sigar.pentagon.gen-coun.mbx.privacy@mail.mil*.

(d) Final determinations on requests for reviews within SIGAR will be made by the Appellate Authority. Additional information may be requested by the Appellate Authority from the person requesting a review if necessary to make a determination.

(e) The Appellate Authority will inform the person making the request in writing of the decision on the request for review within 30 days (excluding Saturdays, Sundays and legal Federal holidays) from the date of receipt by SIGAR of the individual's request for review, unless the Appellate Authority extends the 30 day period for good cause. The extension and the reasons therefore will be sent by SIGAR to the individual within the initial 30 day period. Included in the notice of a decision being reviewed, if the decision does not grant in full the request for review, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with SIGAR setting forth the individual's reasons for his disagreement with the decision upon the request for review. The SIGAR Privacy Officer has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, setting forth its reasons for not making the requested changes, if SIGAR chooses to file such a statement. A copy of the individual's statement, and if it chooses, SIGAR's statement, will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

### § 9301.19 Schedule of fees.

(a) *Prohibitions against charging fees.* Individuals will not be charged for:

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(1) The search and review of the record;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access; or

(3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(b) *Waiver.* The Privacy Officer may, at no charge, provide copies of a record if it is determined that the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* Fees will be charged as provided below except as provided in paragraphs (a) and (b) of this section.

(1) *Duplication of records.* Records will be duplicated at a rate of \$.10 per page for copying of 4 pages or more. There is no charge for copying fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than \$25, the person making the request shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed \$25, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the person requesting to consult with the Privacy Officer in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of individuals making the request.

(3) Fees must be paid in full prior to issuance of requested copies. In the event the person requesting is in arrears for previous requests copies will not be provided for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Privacy Officer, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202.

(5) A receipt for fees paid will be given upon request.

### **PART 9302—REQUESTS FOR TESTIMONY OR THE PRODUCTION OF RECORDS IN A COURT OR OTHER PROCEEDINGS IN WHICH THE UNITED STATES IS NOT A PARTY**

AUTHORITY: Pub. L. 110-181 (Jan. 28, 2008), Section 1229 (122 Stat. 378-85), as amended, and Section 842 (122 Stat. 234-36), 10 U.S.C. 2302 note; and 5 U.S.C. 301.

SOURCE: 77 FR 15562, Mar. 16, 2012, unless otherwise noted.

#### **§ 9302.1 SIGAR Touhy regulations.**

(a) *Applicability.* (1) This section sets forth the policies and procedures of the Special Inspector General for Afghanistan Reconstruction (SIGAR or the agency) regarding the testimony of employees and former employees as witnesses and the production or disclosure of SIGAR documents or information for use in legal proceedings in which the United States is not a party and where the demand is pursuant to a subpoena, order or request (collectively referred to in this section as a “demand”).

(2) This section does not apply to any legal proceeding in which an employee is to testify while on leave status regarding facts or events that are unrelated to the official business of SIGAR.

(3)(i) Nothing in this section affects the rights and procedures governing public access to agency records pursuant to the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a).

(ii) Demands in legal proceedings in which the United States is not a party for the production of SIGAR records or information, or for the testimony of SIGAR employees, regarding information or documents that are protected by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905) or other statutes, must satisfy the requirements for disclosure set forth in those statutes and the applicable regulations of this part, before the records may be provided or testimony given.

(4) This section is intended to provide guidance for the internal operations of SIGAR and to inform the public about

## § 9302.1

SIGAR procedures concerning service of process upon SIGAR and its responses to demands. The procedures specified in this section, or the failure of any SIGAR employee to follow the procedures specified in this section, are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.

(b) *Definitions.* For purposes of this section:

*Agency counsel* means: SIGAR's General Counsel or his or her designee.

*Demand* means a subpoena, order or request for testimony, documents or information related to, or for possible use in, a legal proceeding in which the United States is not a party.

*Document* means any record or other property, no matter what media, and including copies thereof, held by SIGAR, including without limitation, letters, Emails, telegrams, memoranda, facsimiles, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, summaries of meetings and conversations, film impressions, magnetic tapes and sound or mechanical reproductions.

*Employee* means all employees or officers of SIGAR, including (for the purpose of this section only) contractors and any other individuals who have been appointed by, or are subject to the supervision, jurisdiction or control of SIGAR. The procedures established within this subpart also apply to former employees of SIGAR where specifically stated in this section.

*General Counsel* means the General Counsel of SIGAR.

*Legal proceeding* means all pretrial, trial and post-trial stages of all judicial or administrative actions, hearings, investigations, arbitrations or similar proceedings before courts, commissions, boards, grand juries, or other tribunals, foreign or domestic. This term includes all phases of discovery as well as responses to informal requests by attorneys or others involved in legal proceedings seeking interviews or the like.

*Official business* means the authorized business of SIGAR as stated in the

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“National Defense Authorization Act for Fiscal Year 2008,” Pub. L. 110–181 (Jan. 28, 2008), Section 1229 (122 Stat. 378–85), as amended, and Section 842 (122 Stat. 234–36), 10 U.S.C. 2302 note.

*Testimony* means an employee's statement in any form, including testifying before a court or other tribunal or board, giving depositions, interviews, telephonic, televised, videoconference or videotaped statements, and providing written responses to interrogatories, admission requests or other discovery.

(c) *SIGAR policy.* (1) SIGAR was established by Section 1229 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181 (January 28, 2008), as a wartime or overseas contingency operation oversight agency of the United States Government's Executive Branch. SIGAR's Inspector General is appointed by the President of the United States. See Pub. L. 110–181, Section 1229(c). SIGAR performs oversight of Afghanistan reconstruction and security programs, operations and contracts to prevent and detect waste, fraud and abuse pursuant to Sections 1229 and 842 of Public Law 110–181. The records of an inspector general frequently contain sensitive law enforcement information that is protected from disclosure or obtained under guarantees of confidentiality.

(2) In appropriate cases, the agency counsel shall notify the United States Department of Justice (DOJ) of the demand and coordinate with the DOJ to file any appropriate motions or other pleadings.

(3) No current or former employee shall, in response to a demand, produce any SIGAR documents, provide testimony regarding any information relating to or based upon SIGAR documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties or official status, in a legal proceeding in which the United States is not a party, without the prior written authorization of the General Counsel. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951); and 5 U.S.C. 301 (“The head of an Executive department or military department



may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.”)

(d) *Procedures for demand for testimony or production of documents.* (1) A written demand directed to SIGAR for the testimony of a SIGAR employee or for the production of documents shall be served in accordance with the requirements of the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or applicable state procedures, as appropriate. If the demand is served by the U.S. mails, it should be addressed to the General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202-3940. If the demand is served by overnight delivery service or courier, it should be directed to the General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202-3940. SIGAR’s acceptance of a demand shall not constitute an admission or waiver of any objection with respect to the propriety of jurisdiction, service of process, venue, or any other defense in law or equity available under applicable law.

(2) A subpoena or other demand for testimony directed to an employee or former employee shall be served in accordance with the Federal Rules of Civil or Criminal Procedure or applicable State procedure; and a copy of the subpoena or demand shall be delivered to the General Counsel.

(3)(i) *Touhy* Request. In court cases in which the United States or SIGAR is not a party, where the giving of testimony or the production of documents by SIGAR, or a current or former employee is desired, a verified statement (declaration under penalty of perjury) by the litigant or his counsel, setting forth the information with respect to which the testimony or production is desired (“*Touhy* Request”), must be submitted in order to obtain a decision concerning whether such testimony or production will be authorized by

SIGAR. The *Touhy* Request should include: the title of the legal proceeding, the court or other forum, the requesting party’s interest in the legal proceeding, a statement whether other evidence reasonably suited to the requester’s needs is not otherwise available, and, if testimony is requested, the subject matter and intended use of the testimony, a statement whether document(s) could be provided in lieu of testimony to satisfy the request, and a statement that the requester will submit a check for costs of duplication at commercially reasonable rates to SIGAR if the request is granted. The purpose of these requirements is to assist the General Counsel in making a fair and informed decision under governing law regarding whether testimony or the production of document should be authorized and under what conditions, if any. Permission to testify or produce documents will be limited to the areas of proposed testimony described in the *Touhy* Request.

(ii) Agency counsel may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand so that compliance is less burdensome or to obtain information necessary to make the determination required by paragraph (e) of this section. Failure of the requester to cooperate in good faith to enable the General Counsel to make an informed determination under this subpart may serve as a basis for denying the *Touhy* Request.

(iii) A determination under this section to comply or not to comply with the *Touhy* Request is without prejudice to the agency’s assertion of privilege, lack of relevance, technical deficiency, or any other objection to the demand.

(4)(i) Employees shall immediately refer all inquiries and demands made to SIGAR or its employees to the General Counsel.

(ii) An employee who receives a demand shall forward the demand to the General Counsel, who will determine the agency’s response to the demand under this section.

(e) *Factors to be considered by the General Counsel with respect to a Touhy Request.* (1) In deciding whether to authorize the release of official information or the testimony of SIGAR personnel concerning official information (hereafter referred to as the “disclosure”), the General Counsel shall consider the following factors:

(i) Whether the demand is unduly burdensome to the agency or otherwise inappropriate under the applicable rules of discovery, evidence and procedure governing the litigation in which the demand arose, balanced against the need for the specific testimony or documents sought;

(ii) Whether the demand is appropriate under the relevant substantive law of privilege and disclosure of Government information, or seeks information or documents protected from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b), the Privacy Act, 5 U.S.C. 552a, or the Inspector General Act of 1978, as amended, 5 U.S.C. App.;

(iii) Whether the demand would interfere with SIGAR’s statutory mandate stated in the “National Defense Authorization Act for Fiscal Year 2008,” Pub. L. 110–181 (Jan. 28, 2008), Section 1229 (122 Stat. 378–85), as amended; Pub. L. 110–181, Section 842 (122 Stat. 234–36), 10 U.S.C. 2302 note; or the Inspector General Act of 1978, as amended, 5 U.S.C. App.;

(iv) Whether the demand would be in the public interest;

(v) The extent to which the time of employees for conducting official agency business would be compromised;

(vi) Whether the request demonstrates that the information requested is relevant and material to the action pending, genuinely necessary to the proceeding, unavailable from other sources, and reasonable in scope; and

(vii) Whether other similar requests are likely to have a deleterious cumulative effect on the expenditure of agency time and resources.

(2) Among those demands and requests in response to which compliance will ordinarily not be authorized are those with respect to which any of the following factors exists:

(i) The requested disclosure elicits information or documents protected by

a statute, Executive Order or regulation, including but not limited to Section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, section 7(b), or other prohibition from disclosure;

(ii) The requested disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source, confidential informant or undercover agent, or disclose trade secrets or similar confidential commercial or financial information.

(iii) The integrity of the administrative and deliberative processes of SIGAR would be jeopardized;

(iv) The requested disclosure would not be appropriate under the rules of procedure governing the pending litigation or matter in which the demand arose;

(v) The requested disclosure is not appropriate under the relevant substantive law concerning privilege; or

(vi) The requested disclosure, except when production is in camera, would reveal information properly classified or other matters exempt from unrestricted disclosure.

(3) All decisions granting or denying a *Touhy* Request must be in writing and, if a denial, provide the grounds for the decision in summary form based on one or more of the factors listed above.

(f) *Requests for opinion or expert testimony.* (1) Pursuant to 5 CFR 2635.805, an employee shall not provide, with or without compensation, opinion or expert testimony in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, except on behalf of the United States or a party represented by the Department of Justice, without written approval of agency counsel.

(2) Upon a showing by the requestor of exceptional need or unique circumstances, the General Counsel may, in writing, grant authorization for an employee, or former employee, to appear and testify.

(3) Any expert or opinion testimony by a former employee of SIGAR shall be excepted from the restriction under

5 CFR 2635.805 where the testimony involves only general expertise gained while employed at SIGAR.

(g) *Procedures when agency counsel directs an employee not to testify or provide documents.* (1) If agency counsel determines that an employee or former employee should not comply with a subpoena or other request for testimony or the production of documents, agency counsel will so inform the employee and the requesting party who submitted the demand.

(2) If, despite the determination of the agency counsel that testimony should not be given or documents not be produced, a court of competent jurisdiction or other tribunal orders the employee or former employee to testify and/or produce documents, the employee shall promptly notify the General Counsel of such Order.

(i) If agency counsel determines that no further legal review of, appeal from, or challenge to, the Order will be sought, agency counsel shall promptly inform the employee or former employee of said determination.

(ii) If SIGAR determines to challenge an Order directing testimony or the production of documents in litigation in which the United States is not a party, the employee should not comply with the Order. The employee should appear at the time and place as commanded in the order or subpoena. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of this section and respectfully inform the Court or other legal tribunal that he/she has been advised by the General Counsel not to provide the requested testimony or documents pursuant to the decision of the United States Supreme Court in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and this section. Agency counsel will coordinate with the DOJ to file such motions or other pleadings that may be deemed appropriate in the circumstances, such as, for example, a notice to remove the case from state court to Federal court, or a motion to quash or modify the subpoena, or a motion for a protective order.

(h) *Fees.* In the event that a Touhy Request is granted, SIGAR may charge reasonable fees to parties seeking official information or records. Such fees

are calculated to reimburse the Government for the expense of providing such information or records, and may include the costs of time expended by SIGAR employees to process and respond to the request; attorney time for reviewing the request and any responsive records and for related legal work in connection with the request; and reasonable expenses generated by materials and equipment used to search for, produce, and copy the responsive information or records.

#### **PART 9303—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION**

Sec.

9303.101 General.

9303.102 Prior approval for certain outside activities.

**AUTHORITY:** 5 U.S.C. Section 7301; 5 U.S.C. App. (Ethics in Government Act of 1978, as amended), E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.702, 2635.703, 2635.801, 2635.802, 2635.803, and 2635.805.

**SOURCE:** 77 FR 20699, Apr. 6, 2012, unless otherwise noted.

##### **§ 9303.101 General.**

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, SIGAR employees are subject to the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634; the executive branch regulations regarding outside employment at 5 CFR part 2636; and the regulations concerning executive branch financial interests contained in 5 CFR part 2640.

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**§ 9303.102 Prior approval for certain outside activities.**

(a) *Prior approval requirement.* An employee, other than a special Government employee, shall obtain written approval before engaging—with or without compensation—in the following outside activities:

(1) Providing professional services involving the application of the same specialized skills or the same educational background as performance of the employee's official duties;

(2) Teaching, speaking, or writing that relates to the employee's official duties;

(3) Serving as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or active participant for a prohibited source, except that prior approval is not required by this paragraph (a)(3) to provide such service without compensation (other than reimbursement of expenses) for a prohibited source that is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless prior approval for the activity is required by paragraph (a)(1), (a)(2), or (a)(4) of this section; or

(4) Providing services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter:

(i) In which the United States is a party;

(ii) In which the United States has a direct and substantial interest; or

(iii) If the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency.

(b) *Submission of requests for approval.*

(1) Requests for approval shall be submitted in writing to SIGAR's Inspector General or Inspector General's designee through normal supervisory channels. Such requests shall include, at a minimum, the following:

(i) The employee's name and position title;

(ii) The name and address of the person or organization for whom or for which the outside activity is to be performed;

(iii) A description of the proposed outside activity, including the duties and services to be performed while engaged in the activity; and

(iv) The proposed hours that the employee will engage in the outside activity, and the approximate dates of the activity.

(2) Together with the employee's request for approval, the employee shall provide a certification that:

(i) The outside activity will not depend in any way on nonpublic information;

(ii) No official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside activity; and

(iii) The employee has read subpart H ("Outside Activities") of 5 CFR part 2635.

(3) Upon a significant change in the nature or scope of the outside activity or in the employee's official position, the employee shall submit a revised request for approval.

(c) *Approval of requests.* Approval shall be granted only upon a determination by SIGAR's Inspector General or Inspector General's designee, in consultation with the General Counsel and the Director of Public Affairs, that the outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Definitions.* For purposes of this section:

(1) *Active participant* has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) *Nonpublic information* has the meaning set forth in 5 CFR 2635.703(b).

(3) *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1).

(4) *Prohibited source* has the meaning set forth in 5 CFR 2635.203(d).

(5) *Relates to the employee's official duties* has the meaning set forth in 5 CFR 2635.807(a)(2)(i)(B) through (a)(2)(i)(E).